

**NEWPORT BEACH HARBOR COMMISSION MINUTES**  
**City Council Chambers**  
**July 8, 2009**

**CALL TO ORDER**                    6:00 P.M.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL:**                    Chairman Duffield, Commissioners John Corrough, Tim Collins, John Corrough, Don Lawrenz, Karen Rhyne, Ralph Rodheim and Vincent Valdez were present. New Commissioner Vincent Valdez was introduced.

Staff: Lorrie Arcese, Chris Miller and Shannon Levin, David Hunt, Aaron Harp and Jim Campbell

**MINUTES:**                    The minutes from the last meeting were approved.

**ACTION & APPEAL ITEMS**

***ITEM #1***

**Subject:**                    **Election of Officers**

**Issue:**                        The Commission will elect officers to serve for the year.

**Action:**                    1. Karen Rhyne was elected as Chairman, who took over the meeting immediately.  
2. Tim Collins was elected Vice-Chairman  
3. Don Lawrenz was elected Secretary

***ITEM #2***

**Subject:**                    **Aerie Dock Project at 201-207 Carnation Avenue**

**Issue:**                        Based on the recent findings of the Harbor Commission Aerie Task Force, the applicant is appealing the Harbor Commission's April 2009 review which concluded the project does create a significant impact on navigation and recreational boating in the harbor. David Hunt, City Attorney, explained the Harbor Commission's role in this matter. The Commission was asked for comments as an advisory to the Planning Commission first and now the City Council. The Commission's comments will go to the certification of the project to the City Council. He introduced Aaron Harper, Assistant City Attorney, and Jim Campbell, Planning Dept.

**Discussion:**                After setting up buoys to simulate the dock configuration and boats, the Task Force found that the project does not impact navigation or recreational boating in the harbor. There were many concerns that during storm events or emergencies a large boat side tied could be very dangerous even with the expert engineering that is going into the plans. If anchors were used it may go against the navigational code. There are a number of policies that are in practice for such emergencies. It was felt that the language in the mitigation needs to be stronger in calling for a plan of action for storm events; also a concern is the sand dollars and beach protection, not just during construction. It was asked that Items 9, 10 and 11 be clarified. Commissioner Rodheim said that the plans do fall within the guide lines, but is not a great place to build it and too big a project.

**Public Comments:**        **Kathleen MacIntosh** who lives next to the project. She requests again to deny the project and it continue to be denied for approval with the boat extending into the public right of way channel. This becomes a public trust issue when private citizens use public property for private gain. These problems still exist; shoaling

under adjacent docks, destruction of marine relic site, privatization of a public access cove, damage to a marine habitat, interference to adjacent docks. Nowhere is it stated that all waterfront property owners are guaranteed a dock. If the applicant would reduce the number of docks to 5 it would all fit within the pierhead line, including a boat with 25 foot beam. Please continue to deny the application until it fits within the pierhead line. I again request that the buoys be placed out for a month so all can view.

**Roy Ferlander** – It has been brought up that a sail boat could not even get out of that area in a low tide storm event.

Marilyn Back - I am opposed to the size and scale of this project. It doesn't comply with general plan and what we want in our harbor. There will be a 100 foot boat there. Does this set a precedent? Is this a safe configuration? Will it cause damage to the sand dollars and eelgrass?

**Lisa Vallejo** – where in the code is there a provision for appeal to Harbor Commission actions? There are unmitigated impacts – noise. We are concerned about leasing of the docks in the coming years. Not all tenants will want a dock. Why do they need all 8 boat docks? We recommend that the Commission deny the approval of the marina as proposed as we feel it is too big and too much. The comments at the last meeting made sense. Do what is the best for the harbor? She will submit more information that she has.

**Bud Razner** – In inclement weather Area 1 is concentrated by the Harbor Patrol as it is a rough area. The issue of a 100 foot boat and was only brought up for views and kayakers. Maybe they won't put a 100 foot boat there anyway. Engineering will take all factors into consideration in the plans. They won't just let a large boat go. There are 150 boats in the harbor. It is a large project, but the dock amounts are not unreasonable. The view of the boats in the harbor is what is unique. This project has gone through intense scrutiny and deserves support.

**Kent Moore** – Had a boat at the docks when he lived at the old apartments. The bulk of the boat traffic never came near the docks, so he doesn't see a safety concern. There are other boat docks in that area that have ridden out these storms and surges. He hasn't heard of any collisions in the area, but more down the bay. This project creates many benefits to the community.

**Jim Campbell** – Planning Dept. – wanted to add a few items. There are 2 mitigations covering the safety concerns. It will come with the plan check process. They must move the boats in a storm event and find someone to do it. Marine environment impact is covered in the construction management plan. Specific provisions about silt curtains and avoidance of sand dollars are included. The EIR addresses those conditions. The public may come down to the beach, but do not encourage it for impact reasons.

**Jinx Hansen** – The problem with this project is the amount of mitigating factors and how these will be monitored? The EIR has 18 factors. The appeal was verbally given at the Harbor Commission meeting. The harbor is really crowded and where can a boat that size be put if it needs to be moved.

**Action:**

David Hunt explained that the Harbor Commission's role in this matter is as advisory to the City Council. This would not be an appeal but an amendment to the review action of the April meeting. If the Commission feels there are safety issues they need to pass those along to the Council. It can be a vote to change the recommendation, leave as it is or no action and leave it stand.

Commissioner Lawrenz made the motion to amend their previous recommendation and to accept the specific findings of the task force that the project does not significantly impact navigation and recreational boating in the harbor. However, the Harbor Commission does have reservations about the public safety and the berthing of a 100 foot vessel on the side tie in a storm or emergency event.

Harbor Resources staff is to forward mitigation measures for consideration of that safety risk and best management/safe navigational practices on to the City Council.

**ITEM #3**

**Subject:** Newport Bay Copper Reduction Project  
**Issue:** The Harbor Commission heard a presentation from Ray Heimstra of Coastkeeper about the upcoming Newport Bay Copper Reduction Project.

**Discussion:** This is a 4 year program for the boaters to reduce copper use and switch to non-toxic paints. Balboa Yacht Basin will be focused on in this program. There are three components; education, incentive and water monitoring programs. They will work with the boat yards to make sure products are available. Workshops will be held for everyone throughout the harbor. An incentives program will be created to step away from copper. Reduction of copper in the water will be monitored over the 4 years. They are not promoting any mandatory regulations to switch from copper.

We need to make sure that the new paints are non-toxic and not just replace one toxic paint with another. Some new paints can be applied directly over the old paint, but the best is to take off all of the old paint. Storm drain runoff is currently being studied and could be an issue. What is the threshold we are trying to reduce the copper to? The study on the guidelines is about 2 years away from being completed. We want to show by example that using Balboa Yacht Basin for the program we can reduce their copper level. Copper comes off by leaching and cleaning activities of boats. With all of the pollutants in the bay, why are we focusing on the copper? It doesn't seem that the totals can be as high as shown. Ray said there have been many studies done on it and it is high.

**Action:** Receive and File

**SUB-COMMITTEE REPORTS:**

- Commissioner Rodheim said that the cruising guide is going well and will come before the Harbor Commission in August.
- Commissioner Collins asked about the HAMP and was told it in the City Attorney's and Planning for review.
- Commissioner Corrough said that the water taxi feasibility study is under review.

**HARBOR RESOURCES UPDATE** – Chris gave an update on the harbor. Please refer to the following website: *The update is posted at:* <http://www.city.newport-beach.ca.us/hbr> (*under Harbor Resources Updates*).

**COMMISSIONER'S ANNOUNCEMENTS OR MATTERS TO BE PLACED ON FUTURE AGENDAS FOR DISCUSSION, ACTION OR REPORT**

- Commissioner Rodheim asked that the double dock at Terrible Herbst property be discussed.
- Chairman Rhyne as for a study session to go over the task list.
- Commissioner Duffield asked that the dinghy docks, including one under the Lido bridge, be discussed.

**RECOMMENDED TOPICS FOR FUTURE AGENDAS:**

**DATE OF NEXT MEETING:**

August 12, 2009  
City Council Chambers

**ADJOURNMENT**